IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST FEBRUARY 2007 / 2ND PHALGUNA 1928

Crl.MC.No. 458 of 2007()

CC.61/2007 of JUDL.MAGISTRATE OF FIRST CLASS, KARUNAGAPPALLY

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PETITIONER:

SHAHIDA BEEVI,
AGED 48 YEARS,
W/O. MOHAMMED KUNJU,
`MIDHUN DALE', PADANAIRKULANGARA SOUTH,
KARUNAGAPPILLY, KOLLAM DISTRICT.

BY ADV. SRI.P.K.IBRAHIM

RESPONDENTS:

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1. THE STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

2. ABDUL RAZACK,
S/O. IBRAHIMKUTTY,
`FIRDHOUSE',
ALAPPADU MURI,
KARUNAGAPPALLY VILLAGE,
KOLLAM DISTRICT.

BY P.P. SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 458 of 2007

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Dated this the 21st day of February, 2007

O R D E R

The petitioner is the second accused and the learned Magistrate has taken cognizance of the offence punishable under Section 420 I.P.C. against the petitioner also. Such cognizance has been taken on the basis of a private complaint filed by the respondent/complainant and after conducting an enquiry under Section 202 Cr.P.C. Investigation has also been conducted under Section 202 Cr.P.C. before cognizance was taken.

2. The petitioner has received summons. She has not appeared before the learned Magistrate. She has rushed to this court with this petition under Section 482 Cr.P.C. It is submitted that cognizance does not deserve to be taken against the petitioner. No satisfactory allegations have been raised against the petitioner. If at all only a civil liability is revealed. In these circumstances initiation of proceedings amount to abuse of process of the court. The same may be prevented by invocation of the jurisdiction under Section 482 Cr.P.C., submits the learned counsel.

3. I have no hesitation to agree that this Court has jurisdiction under Section 482 Cr.P.C. to deal with such a situation. But the crucial question is whether this is a fit case in which such extra ordinary inherent jurisdiction ought to be invoked. In every case where discharge under Section 245(2) or 245(1) Cr.P.C. or a later acquittal is a possibility, this court will not be justified in invoking such jurisdiction. Has justice failed? Has there been failure/miscarriage of justice? These are the crucial questions while considering the invocation of the powers under Section 482 Cr.P.C.

4. Why cannot the petitioner take resort to the provisions of Section 245(2) Cr.P.C.? Cognizance has been taken ex parte. It is possible that the learned Magistrate may not have adverted to specific circumstances from the point of view of the petitioner. Law does not leave a party like the petitioner without remedy. This is an eminently fit case where the petitioner must appear before the learned Magistrate and seek discharge under Section 245(2) Cr.P.C. on the ground that the allegations raised against her are groundless. I have no reason to assume that the learned Magistrate would not consider that contention on merits, in accordance with law and expeditiously. Every court must do the same. The mere fact that

cognizance has been taken by the learned Magistrate is no reason to assume that the learned Magistrate will not take a different view when called upon to exercise the functions under Section 245(2) Cr.P.C. No court would be a prisoner of the adhoc decision reached earlier ex parte when the court was not assisted by the other side. The counsel submits that the petitioner. a woman, would be obliged unnecessarily to appear before the learned Magistrate.

5. I am satisfied, in the peculiar facts and circumstances of this case that there is no reason for the learned Magistrate to insist on personal presence of the petitioner before a decision is taken on the claim for discharge under Section 245(2) Cr.P.C. The petitioner shall be permitted to appear through counsel and only if it is found that she is not entitled for discharge under Section 245(2), her personal presence need be insisted.

6. With the above observations this Crl.M.C. is dismissed.

(R. BASANT)
Judge

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